

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3037

Introduced by Assembly Member ~~Dymally~~ Yee

February 26, 2004

~~An act to amend Sections 6310, 6312, and 6401.7 of, to add Sections 6312.1, 6312.2, 6312.5, 6401.8, 6401.9, 6401.10, and 6401.11 to, and to repeal Section 6311 of~~ *An act to amend Sections 6302 and 6401.7 of, and to add Sections 6401.8 and 6401.9 to, the Labor Code, and to amend Section 1103 of, and to add Chapter 1.5 (commencing with Section 1200) to Part 1 of Division 2 of, the Public Contract Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3037, as amended, ~~Dymally~~ Yee. Employment: occupational safety and health.

~~Under existing law, it is unlawful to discharge or discriminate against an employee for making a complaint regarding employee safety or health, instituting or testifying in any proceeding under his or her rights, participating in an occupational health and safety committee, or refusing to perform work in violation of any occupational safety or health standard or safety order. Existing law further authorizes any employee who believes that he or she has been unlawfully discharged or otherwise discriminated against to file a complaint with the Labor Commissioner, and the Labor Commissioner is required to investigate those complaints.~~

~~This bill, instead, would make it an unlawful employment practice for an employer to subject an employee to an adverse employment~~

~~action, as defined, because the employee filed a complaint relating to employee safety or health, instituted or testified in a proceeding under his or her rights, participated in an occupational health and safety committee, or refused to perform unsafe work, as defined. The bill would provide for the employee to file a complaint of adverse employment action with the Division of Occupational Safety and Health and would set forth the minimum procedures for filing, investigating, and determining complaints of occupational safety and health discrimination. The bill would require the division to establish additional procedures and criteria for investigating and determining complaints and to file an annual report with the Legislature relating to employee safety and health grievances.~~

~~Under existing law, any employer who willfully refuses to rehire, promote, or otherwise restore an employee who has been determined to be eligible for rehiring or promotion, is guilty of a misdemeanor.~~

~~Because this bill would revise and expand the conditions under which an employer may be guilty of a misdemeanor, the bill would redefine this offense, thereby imposing a state-mandated local program.~~

~~Under existing law, an employee unlawfully discharged or discriminated against is entitled to reinstatement and reimbursement for lost wages.~~

~~This bill would provide that the employee is entitled to reinstatement, the recovery of a penalty at least 3 times the value of the employee's lost benefits and wages, and reasonable attorney's fees and costs.~~

~~Existing law requires every employer to establish an effective injury prevention program, and specifically permits employer and employee occupational safety and health committees to be included in the employer's injury prevention program.~~

~~This bill would require the injury and illness prevention program (IIPP) of an employer to include either a joint employer-employee occupational safety and health committee or an employer *employer-employee* safety liaison team, except as specified. The bill would require the Division of Occupational Safety and Health to adopt regulations to implement this new requirement on or before January 1, 2006, and to establish minimum criteria regarding committee duties and selection of employee representatives.~~

~~Existing law creates a presumption that an employer is in substantial compliance with the communication requirement of the employer's injury prevention program if the employer's occupational safety and health committee conforms with specified criteria.~~



This bill would require the ~~Division of Workers' Compensation~~ *Department of Industrial Relations or one of its divisions* to establish criteria for a certificate of merit for employers with an effective IIPP with an effective joint employer-employee occupational safety and health committee. The certificate would entitle the employer to additional incentives, including a 5% discount on the employer's workers' compensation premium and a presumption that an employer meets responsible bidding requirements for safety and health.

The bill would require employers to submit certificate applications under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would impose related responsible bidder requirements for public contracts, that would require demonstration of the effectiveness of the bidder's IIPP. The bill would require the Department of Industrial Relations to develop model guidelines for contractual language for public entities to assure that the successful bidder provides a safe and healthful work place.

~~Existing law requires every workers' compensation insurer to conduct a review of the IIPP of each of its insureds, as specified, to determine whether the insured has implemented all of the required components of the IIPP, and evaluate their effectiveness.~~

~~This bill would additionally require insurers to conduct an on-site review, as specified, and to provide training assistance to certain employers. Insurers also would be required to develop and implement a series of targeted prevention programs, as specified.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares that~~
 2 ~~workplace deaths, injuries, and illnesses take a tremendous, tragic,~~
 3 ~~costly, and unnecessary toll in California. A significant means of~~
 4 ~~reducing the costs of workplace deaths, injuries, and~~

1 illnesses—personal and economic costs borne by the injured
2 worker and workers' compensation costs borne by the
3 employer—is to reduce their incidence. This requires a
4 multi-faceted approach involving education of both workers and
5 employers as to their respective rights and duties, encouragement
6 to work cooperatively, and ultimately strong government as well
7 as private enforcement efforts. To strengthen this multi-faceted
8 approach, it is the intent of the Legislature to focus on effective
9 means to assure that workers and employers can, at the workplace,
10 solve problems quickly and cooperatively, without workers
11 fearing retaliation. The Legislature believes labor-management
12 health and safety cooperation, so long as it includes
13 knowledgeable, independent worker participation, will reduce
14 workplace deaths, injuries, and illnesses. The Legislature believes
15 that employers who have effective cooperative programs should
16 be rewarded when, for example, they bid on government contracts.
17 It is also the intent of the Legislature to assure that workers have
18 effective and enforceable rights to secure safe and healthful
19 working conditions through meaningful participation in the
20 employer's injury and illness prevention program and further that
21 workers be protected against reprisals for participation in
22 occupational safety and health matters, including, but not limited
23 to, making complaints about hazardous conditions and refusing to
24 work in hazardous conditions. The following rights and remedies
25 shall be available and rigorously enforced.

26 SEC. 2. Section 6310 of the Labor Code is amended to read:
27 6310. (a) It is an unlawful employment practice for an
28 employer to subject an employee to an adverse employment action
29 because any of the following has occurred:

30 (1) The employee filed, caused to be filed, or made known his
31 or her intention to file, any oral or written complaint to the
32 division, other governmental agencies having statutory
33 responsibility for or assisting the division with reference to
34 employee safety or health, his or her employer or any agent of his
35 or her employer, or his or her representative. The complaint shall
36 be in good faith about a working condition or practice that creates
37 a real and apparent hazard or is likely to cause death or serious
38 physical injury, or that the employee reasonably believes to be
39 unsafe or dangerous, whether or not there exists an occupational
40 safety and health standard or order that is being violated. The

1 ~~complaint shall be with regard to one or more conditions or~~
2 ~~practices affecting the employee, his or her fellow employees, or~~
3 ~~the employees of another employer.~~

4 ~~(2) The employee instituted or caused to be instituted any~~
5 ~~proceeding under or relating to his or her rights or has testified or~~
6 ~~is about to testify in the proceeding or because of the exercise by~~
7 ~~the employee on behalf of himself, herself, or others of any rights~~
8 ~~afforded him or her pursuant to this division.~~

9 ~~(3) The employee participated in an occupational health and~~
10 ~~safety committee.~~

11 ~~(4) The employee refused to perform unsafe work, as defined~~
12 ~~in subdivision (d), the performance of which may violate this code,~~
13 ~~including Section 6400, any occupational safety or health~~
14 ~~standard, or any safety order of the division.~~

15 ~~(b) An employer who violates subdivision (a) is liable for the~~
16 ~~following:~~

17 ~~(1) Twenty-five thousand dollars (\$25,000) or three times the~~
18 ~~value of the employee's lost benefits and wages, whichever is~~
19 ~~greater, if the employee has been discharged.~~

20 ~~(2) Five thousand dollars (\$5,000) or three times the value of~~
21 ~~the employee's lost benefits and wages, whichever is greater, if the~~
22 ~~employee has suffered an adverse employment action or actions~~
23 ~~other than discharge.~~

24 ~~(3) Reinstatement of the employee.~~

25 ~~(4) Reasonable attorney's fees and costs.~~

26 ~~(c) For purposes of this chapter, "adverse employment action"~~
27 ~~means a discharge, demotion, or suspension of an employee, or an~~
28 ~~action that threatens to discharge or in any other manner~~
29 ~~discriminates against an employee in a term or condition of~~
30 ~~employment.~~

31 ~~(d) For purposes of this section, "refused to perform unsafe~~
32 ~~work" means a refusal to perform work under all of the following~~
33 ~~conditions:~~

34 ~~(1) The employee complained in good faith about a working~~
35 ~~condition or practice that creates a real and apparent hazard or is~~
36 ~~likely to cause death or serious physical injury, or that the~~
37 ~~employee reasonably believes to be unsafe or dangerous, whether~~
38 ~~or not there existed an occupational safety and health standard or~~
39 ~~order that was being violated. The complaint shall be with regard~~

1 to one or more conditions or practices affecting the employee, his
2 or her fellow employees, or the employees of another employer.

3 (2) As soon as practicable, and immediately upon request, the
4 employee reported his or her refusal and reasons to his or her
5 immediate supervisor, foreperson, or any person in authority.

6 (3) The employee performed alternative work if requested by
7 the employer.

8 (c) Any employer who willfully refuses to rehire, promote, or
9 otherwise restore an employee or former employee who has been
10 determined to be eligible for rehiring, promotion, or restoration by
11 a grievance procedure, arbitration, or hearing authorized by law,
12 is guilty of a misdemeanor.

13 SEC. 3. ~~Section 6311 of the Labor Code is repealed.~~

14 SEC. 4. ~~Section 6312 of the Labor Code is amended to read:~~

15 6312. ~~Any employee who believes that he or she has been~~
16 ~~subjected to an adverse employment action by any person in~~
17 ~~violation of Section 6310 may file a complaint with the division~~
18 ~~pursuant to Section 6312.2.~~

19 SEC. 5. ~~Section 6312.1 is added to the Labor Code, to read:~~

20 6312.1. ~~(a) Within 20 days of receipt of a complaint of an~~
21 ~~adverse employment action in violation of Section 6310, the chief~~
22 ~~of the division or his or her designee shall complete a preliminary~~
23 ~~review to determine whether to proceed with a full investigation.~~

24 (b) ~~No later than June 30, 2005, and before implementing this~~
25 ~~section for preliminary review, the division shall develop~~
26 ~~evaluation criteria for the preliminary review. The criteria, as well~~
27 ~~as data and explanatory information regarding the matters to~~
28 ~~which these criteria are applied, shall be included in the first annual~~
29 ~~and in subsequent annual reports to the Legislature pursuant to~~
30 ~~Section 6312.5. The decision of the division whether or not to~~
31 ~~pursue a full investigation shall be without prejudice to the right~~
32 ~~of a complainant to pursue or obtain any other legal remedy he or~~
33 ~~she may have and is not intended to, and does not, affect existing~~
34 ~~rights or remedies available to a complainant.~~

35 (c) ~~This section shall remain in effect only until January 1,~~
36 ~~2007, and as of that date is repealed, unless a later enacted statute,~~
37 ~~that is enacted before January 1, 2007, deletes or extends that date.~~

38 SEC. 6. ~~Section 6312.2 is added to the Labor Code, to read:~~

39 6312.2. ~~(a) Any person who believes that he or she has been~~
40 ~~discharged or otherwise discriminated against in violation of~~

1 ~~Section 6310 may file a complaint with the division within six~~
2 ~~months after the occurrence of the violation. The six-month period~~
3 ~~may be extended by the chief of the division for good cause.~~

4 ~~(b) The chief of the division or his or her designee shall assign~~
5 ~~the complaint to an occupational safety and health discrimination~~
6 ~~complaint investigator who shall prepare and submit a report to the~~
7 ~~chief based on an investigation of the complaint. The chief may~~
8 ~~designate his or her chief deputy, a regional manager, or division~~
9 ~~counsel to receive and review the reports.~~

10 ~~(c) No later than June 30, 2005, the chief shall establish~~
11 ~~procedures for the investigation of occupational safety and health~~
12 ~~discrimination complaints.~~

13 ~~(d) Upon receipt of a complaint, the division shall provide to~~
14 ~~each complainant both of the following:~~

15 ~~(1) A summary of the procedures for processing the complaint.~~

16 ~~(2) Notice that the complainant may file a separate, concurrent~~
17 ~~complaint with the United States Department of Labor within 30~~
18 ~~days after the occurrence of the violation.~~

19 ~~(e) The procedures established pursuant to subdivision (c)~~
20 ~~shall, at a minimum, comply with all of the following:~~

21 ~~(1) The division shall provide the complainant and respondent~~
22 ~~written notice of whether or not it shall proceed with that full~~
23 ~~investigation and shall commence a full investigation within 20~~
24 ~~days of the date of receipt of the complaint.~~

25 ~~(A) If the complainant failed to provide sufficient information~~
26 ~~to process the complaint, the division shall notify the complainant~~
27 ~~as soon as possible and instruct the complainant regarding what~~
28 ~~additional specific information is needed to process the complaint.~~

29 ~~(B) Upon commencement of a full investigation, a written~~
30 ~~notice shall inform the complainant and respondent of the nature~~
31 ~~of the complaint, their respective rights and responsibilities, and~~
32 ~~all procedures involved in resolving the complaint, as established~~
33 ~~pursuant to subdivision (c).~~

34 ~~(2) The division shall issue subpoenas, upon a showing of good~~
35 ~~cause, for additional evidence in any form or to compel testimony~~
36 ~~from a witness.~~

37 ~~(3) The investigation shall be conducted by an inspector,~~
38 ~~investigator, or attorney designated by the division, who shall~~
39 ~~obtain and consider, at a minimum, all of the following~~
40 ~~information:~~

1 ~~(A) Written statements and transcripts of oral statements~~
2 ~~submitted by the complainant in response to questioning by the~~
3 ~~division, which shall include all the elements of a prima facie case.~~

4 ~~(B) Written statements submitted by the respondent.~~

5 ~~(C) Written statements or transcripts of oral statements~~
6 ~~submitted by the complainant in response to questioning by the~~
7 ~~division, which shall include questioning the complainant~~
8 ~~regarding evidence that might tend to rebut statements offered by~~
9 ~~the respondent.~~

10 ~~(D) Documents subpoenaed from the respondent or any other~~
11 ~~relevant source to support or rebut the evidence of the complainant~~
12 ~~or the respondent.~~

13 ~~(E) Written statements or transcripts of oral statements given~~
14 ~~by witnesses who have information concerning the alleged~~
15 ~~violation. The identity of a witness shall remain confidential~~
16 ~~unless the identification of the witness becomes necessary to~~
17 ~~proceed with the investigation or to prosecute an action to enforce~~
18 ~~a determination.~~

19 ~~(4) At any time before the chief, or his or her designee, issues~~
20 ~~his or her report or decision, he or she may hold an investigative~~
21 ~~hearing if, in his or her opinion, a hearing is necessary. All formal~~
22 ~~declarations, documentary evidence, and any investigative reports~~
23 ~~that have previously been filed shall be made a part of the record.~~
24 ~~The complainant and the respondent shall have the opportunity to~~
25 ~~review the record. The complainant and the respondent shall have~~
26 ~~the right to be present, to present further evidence, and to present~~
27 ~~and cross-examine witnesses. The division shall issue, serve, and~~
28 ~~enforce subpoenas on behalf of itself, the complainant, or the~~
29 ~~respondent to compel the attendance of witnesses or to produce~~
30 ~~evidence at the hearing.~~

31 ~~(5) The person conducting the investigation shall submit to the~~
32 ~~chief or his or her designee, a written investigation report~~
33 ~~summarizing the findings of the investigation and all the~~
34 ~~information obtained pursuant to paragraphs (1) to (4), inclusive.~~
35 ~~The investigation report shall include recommended findings of~~
36 ~~fact and conclusions of law, and shall also include attachments of~~
37 ~~all statements and documents obtained in the investigation.~~

38 ~~(6) The chief shall notify the complainant and respondent of his~~
39 ~~or her determination not later than 60 days after the filing of the~~
40 ~~complaint. The notice shall inform the parties of their right to~~

1 request a copy of all reports, attachments, statements, documents,
2 and hearing transcripts.

3 (f) (1) If the chief determines a violation has occurred, he or
4 she shall promptly notify the complainant and respondent, direct
5 the respondent to cease and desist from the violation, and take any
6 action deemed necessary to remedy the violation. These actions
7 may include, but are not limited to, where appropriate, rehiring or
8 reinstatement, reimbursement of lost wages and benefits and
9 interest thereon, payment of reasonable attorney's fees associated
10 with any hearing held by the chief in investigating the complaint,
11 the posting of notices to employees, and the specific penalties set
12 forth in subdivision (b) of Section 6310 for matters charging a
13 violation of that section.

14 (2) If the respondent does not comply with the order within 10
15 days following notification of the chief's determination, the chief
16 shall bring an action promptly against the respondent in a court of
17 competent jurisdiction. The chief shall petition the court for
18 appropriate temporary relief or a restraining order unless he or she
19 determines good cause exists for not doing so. If the chief prevails
20 in this action, the court shall award reasonable attorney's fees,
21 court costs, and investigative costs to the chief. Fees and costs that
22 are awarded to the chief shall be retained by the chief and used to
23 fund investigations of complaints filed pursuant to Section 6310.

24 (3) If the chief fails to bring an action in court promptly, the
25 complainant may bring an action against the chief in any
26 appropriate court for a writ of mandate to compel the chief to bring
27 an action in court against the respondent. If the complainant
28 prevails in his or her action for a writ, the court shall award the
29 complainant court costs and reasonable attorney's fees,
30 notwithstanding any other law.

31 (4) Regardless of any delay in bringing an action in court, the
32 chief shall not be divested of jurisdiction.

33 (5) In any action, the court may permit the claimant to intervene
34 as a party plaintiff to the action and shall have jurisdiction, for
35 cause shown, to restrain the violation and to order all appropriate
36 relief. Appropriate relief includes, but is not limited to, rehiring or
37 reinstatement of the complainant, reimbursement of lost wages
38 and benefits and interest thereon, the specific penalties set forth in
39 subdivision (b) of Section 6310 for matters charging a violation of

1 that section, and any other compensation or equitable relief as is
2 appropriate under the circumstances of the case.

3 (g) (1) If the chief determines that no violation has occurred,
4 he or she shall notify the complainant and respondent and dismiss
5 the complaint.

6 (2) The chief may direct the complainant to pay reasonable
7 attorney's fees associated with any hearing held by the chief if the
8 chief finds the complaint was frivolous, unreasonable, groundless,
9 and brought in bad faith.

10 (3) The complainant may, after notification of the chief's
11 determination to dismiss a complaint, bring an action in an
12 appropriate court, which shall have jurisdiction to determine
13 whether a violation occurred and, if so, to restrain the violation and
14 order all appropriate relief to remedy the violation. Appropriate
15 relief includes, but is not limited to, rehiring or reinstatement of the
16 complainant, reimbursement of lost wages and benefits and
17 interest thereon, the specific penalties set forth in subdivision (b)
18 of Section 6310 for matters charging a violation of that section,
19 and other compensation or equitable relief as is appropriate under
20 the circumstances of the case.

21 (4) When dismissing a complaint, the chief shall advise the
22 complainant of his or her right to bring an action in an appropriate
23 court if he or she disagrees with the determination of the chief, and
24 in the case of an alleged violation of Section 6310, to file a
25 complaint against the state program with the United States
26 Department of Labor.

27 (5) The timely filing of a complaint against the state program
28 with the United States Department of Labor shall stay the chief's
29 dismissal of the division complaint until the United States
30 Secretary of Labor makes a determination regarding the alleged
31 violation. Within 15 days of receipt of that determination, the chief
32 shall notify the parties whether he or she will reopen the complaint
33 filed with the division or whether he or she will reaffirm the
34 dismissal.

35 (h) The chief shall notify the complainant and respondent of his
36 or her determination under paragraph (1) of subdivision (f) or
37 paragraph (1) of subdivision (g), not later than 60 days after the
38 filing of the complaint. Determinations by the chief under
39 subdivision (f) or (g) may be appealed by the complainant or
40 respondent to the Director of Industrial Relations within 10 days

1 following notification of the chief's determination. The appeal
2 shall set forth specifically and in full detail the grounds upon which
3 the appealing party considers the chief's determination to be unjust
4 or unlawful, and every issue to be considered by the director. The
5 director may consider any issue relating to the initial
6 determination and may modify, affirm, or reverse the chief's
7 determination. The director's determination shall supersede the
8 determination of the chief. The director shall notify the
9 complainant and respondent of his or her determination within 10
10 days of receipt of the appeal.

11 (i) The rights and remedies provided by this section do not
12 preclude an employee from pursuing any other rights and remedies
13 under any other law. Nothing in this section is intended to, nor does
14 it, affect existing rights or remedies available to a complainant.

15 SEC. 7. Section 6312.5 is added to the Labor Code, to read:

16 6312.5. The division shall file an annual report with the
17 Legislature by December 1 of each year. This report shall provide
18 an accounting of all matters involving Sections 6310 to 6312,
19 inclusive, and shall report statistics so as to coincide with the
20 federal Occupational Safety and Health Administration fiscal
21 year. The report shall include, but not be limited to, information
22 regarding cases filed, investigated, dismissed, settled, heard, or
23 appealed, the caseload of the division, the timeliness of
24 dispositions, and other information the Legislature may request in
25 advance of the report. The Legislature shall direct the division as
26 to any additional items to include in the report by October 1 of the
27 year the report is due. The Legislature may hold a hearing on the
28 report and obtain additional information after the report is
29 submitted.

30 SEC. 8.—

31 *SECTION 1. The Legislature finds and declares that*
32 *workplace deaths, injuries, and illnesses take a tremendous,*
33 *tragic, costly, and unnecessary toll in California. A significant*
34 *means of reducing the costs of workplace deaths, injuries, and*
35 *illnesses--personal and economic costs borne by the injured*
36 *worker and workers' compensation costs borne by the*
37 *employer--is to reduce the incidence of these events. This requires*
38 *a multi-faceted approach involving education of both workers and*
39 *employers as to their respective rights and duties, encouragement*
40 *to work cooperatively, and ultimately strong government as well*

1 as private enforcement efforts. To strengthen this multi-faceted
2 approach, it is the intent of the Legislature to focus on effective
3 means to assure that workers and employers can, at the workplace,
4 solve problems quickly and cooperatively. The Legislature
5 believes labor-management health and safety cooperation, so long
6 as it includes knowledgeable, independent worker participation,
7 will reduce workplace deaths, injuries, and illnesses. The
8 Legislature believes that employers who have effective
9 cooperative occupational safety and health programs should be
10 rewarded when, for example, they bid on government contracts,
11 and they should also receive discounts on their workers'
12 compensation insurance premiums. It is also the intent of the
13 Legislature to assure that workers have effective and enforceable
14 rights to secure safe and healthful working conditions through
15 meaningful participation in the employer's injury and illness
16 prevention program and further that workers be protected against
17 reprisals for participation in occupational safety and health
18 matters. The following rights and remedies shall be available and
19 rigorously enforced.

20 SEC. 2. Section 6302 of the Labor Code is amended to read:
21 6302. As used in this division:

22 (a) "Director" means the Director of Industrial Relations.

23 (b) "Department" means the Department of Industrial
24 Relations.

25 (c) "Insurer" includes the State Compensation Insurance Fund
26 and any private company, corporation, mutual association, and
27 reciprocal or interinsurance exchange, authorized under the laws
28 of this state to insure employers against liability for compensation
29 under this part and under Division 4 (commencing with Section
30 3201), and any employer to whom a certificate of consent to
31 self-insure has been issued.

32 (d) "Division" means the Division of Occupational Safety and
33 Health.

34 (e) "Standards board" means the Occupational Safety and
35 Health Standards Board, within the department.

36 (f) "Appeals board" means the Occupational Safety and
37 Health Appeals Board, within the department.

38 (g) "Aquaculture" means a form of agriculture as defined in
39 Section 17 of the Fish and Game Code.

(h) “Serious injury or illness” means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway.

(i) “Serious exposure” means any exposure of an employee to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency, or exposure over time and is in a degree or amount sufficient to create a substantial probability that death or serious physical harm in the future could result from the exposure.

(j) “*Serious physical harm*” means any injury or illness occurring in a place of employment or in connection with any employment that meets the following criteria:

(1) *An injury is a temporary, prolonged, or permanent impairment of the body in which part of the body is made functionally useless or substantially reduced in function on or off the job or which results in permanent disfigurement. Injuries involving impairment or disfigurement would usually require treatment by a physician and may include, but are not limited to, the following:*

(A) *Amputation (loss of all or part of a body appendage that includes the loss of bone).*

(B) *Concussion or other head injury resulting in an altered level of consciousness.*

(C) *Crushing (internal, even though the skin surface may be intact).*

(D) *Simple or compound fracture.*

(E) *Thermal, electric, or chemical burn or scald.*

(F) *Cut, laceration, or puncture involving significant bleeding or requiring suturing.*

(2) *An illness is an acute or chronic condition that could shorten life or result in significant impairment of physical or mental function or impairment of a part of the body. These conditions include, but are not limited to, the following:*

(A) *Cancer.*

1 (B) *Respiratory diseases, such as silicosis, byssinosis,*
2 *asbestosis, or work-related asthma.*

3 (C) *Infectious diseases, such as human immunodeficiency virus*
4 *(HIV), hepatitis, and tuberculosis (TB).*

5 (D) *Poisoning from the inhalation, ingestion, or skin*
6 *absorption of a toxic substance that adversely affects a bodily*
7 *system.*

8 (E) *Noise-induced hearing loss.*

9 SEC. 3. Section 6401.7 of the Labor Code is amended to read:

10 6401.7. (a) Every employer shall establish, implement, and
11 maintain an effective injury and illness prevention program. The
12 program shall be written, except as provided in subdivision (e),
13 and shall include, but not be limited to, all of the following
14 elements:

15 (1) Identification of the person or persons responsible for
16 implementing the program.

17 (2) The employer's system for identifying and evaluating
18 workplace hazards, including scheduled periodic inspections to
19 identify unsafe conditions and work practices.

20 (3) The employer's methods and procedures for correcting
21 unsafe or unhealthy conditions and work practices in a timely
22 manner.

23 (4) An occupational health and safety training program
24 designed to instruct employees in general safe and healthy work
25 practices and to provide specific instruction with respect to
26 hazards specific to each employee's job assignment.

27 (5) The employer's system for communicating with employees
28 on occupational health and safety matters, including provisions
29 designed to encourage employees to inform the employer of
30 hazards at the worksite without fear of reprisal.

31 (6) The employer's system for ensuring that employees comply
32 with safe and healthy work practices, which may include
33 disciplinary action.

34 (b) The employer shall correct unsafe and unhealthy conditions
35 and work practices in a timely manner based on the severity of the
36 hazard.

37 (c) The employer shall train all employees when the training
38 program is first established, all new employees, and all employees
39 given a new job assignment, and shall train employees whenever
40 new substances, processes, procedures, or equipment are

1 introduced to the workplace and represent a new hazard, and
 2 whenever the employer receives notification of a new or
 3 previously unrecognized hazard. Beginning January 1, 1994, an
 4 employer in the construction industry who is required to be
 5 licensed under Chapter 9 (commencing with Section 7000) of
 6 Division 3 of the Business and Professions Code may use
 7 employee training provided to the employer's employees under a
 8 construction industry occupational safety and health training
 9 program approved by the division to comply with the requirements
 10 of subdivision (a) relating to employee training, and shall only be
 11 required to provide training on hazards specific to an employee's
 12 job duties.

13 (d) The employer shall keep appropriate records of steps taken
 14 to implement and maintain the program. Beginning January 1,
 15 1994, an employer in the construction industry who is required to
 16 be licensed under Chapter 9 (commencing with Section 7000) of
 17 Division 3 of the Business and Professions Code may use records
 18 relating to employee training provided to the employer in
 19 connection with an occupational safety and health training
 20 program approved by the division to comply with the requirements
 21 of this subdivision, and shall only be required to keep records of
 22 those steps taken to implement and maintain the program with
 23 respect to hazards specific to an employee's job duties.

24 (e) (1) The standards board shall adopt a standard setting forth
 25 the employer's duties under this section, on or before January 1,
 26 1991, consistent with the requirements specified in subdivisions
 27 (a), (b), (c), and (d). The standards board, in adopting the standard,
 28 shall include substantial compliance criteria for use in evaluating
 29 an employer's injury and illness prevention program. The board
 30 may adopt less stringent criteria for employers with few
 31 employees and for employers in industries with insignificant
 32 occupational safety or health hazards.

33 (2) Notwithstanding subdivision (a), for employers with fewer
 34 than 20 employees who are in industries that are not on a
 35 designated list of high hazard industries and who have a workers'
 36 compensation experience modification rate of 1.1 or less, and for
 37 any employers with fewer than 20 employees who are in industries
 38 that are on a designated list of low hazard industries, the board
 39 shall adopt a standard setting forth the employer's duties under this
 40 section consistent with the requirements specified in subdivisions

(a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the “designated list of high hazard industries” shall be the list established pursuant to this paragraph.

For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The employer’s injury and illness prevention program, as required by this section, shall cover all of the employer’s employees and all other workers who the employer controls or directs, in conformity with subdivision (b) of Section 6400. Nothing in this subdivision shall diminish the obligations of a contractor or other employer that controls or directs its own employees on the job.

(g) Where a contractor supplies its employee to a state agency employer on a temporary basis, the state agency employer may assess a fee upon the contractor to reimburse the state agency for the additional costs, if any, of including the contract employee within the state agency’s injury and illness prevention program.

(h) (1) The division shall prepare a Model Injury and Illness Prevention Program for Non-High-Hazard Employment, and shall make copies of the model program prepared pursuant to this subdivision available to employers, upon request, for posting in the workplace. An employer who adopts and implements the model program prepared by the division pursuant to this paragraph in good faith shall not be assessed a civil penalty for the first

1 citation for a violation of this section issued after the employer's
2 adoption and implementation of the model program.

3 (2) For purposes of this subdivision, the division shall establish
4 a list of non-high-hazard industries in California, that may include
5 the industries that, pursuant to Section 14316 of Title 8 of the
6 California Code of Regulations, are not currently required to keep
7 records of occupational injuries and illnesses under Article 2
8 (commencing with Section 14301) of Subchapter 1 of Chapter 7
9 of Division 1 of Title 8 of the California Code of Regulations.
10 These industries, identified by their Standard Industrial
11 Classification Codes, as published by the United States Office of
12 Management and Budget in the Manual of Standard Industrial
13 Classification Codes, 1987 Edition, are apparel and accessory
14 stores (Code 56), eating and drinking places (Code 58),
15 miscellaneous retail (Code 59), finance, insurance, and real estate
16 (Codes 60–67), personal services (Code 72), business services
17 (Code 73), motion pictures (Code 78) except motion picture
18 production and allied services (Code 781), legal services (Code
19 81), educational services (Code 82), social services (Code 83),
20 museums, art galleries, and botanical and zoological gardens
21 (Code 84), membership organizations (Code 86), engineering,
22 accounting, research, management, and related services (Code
23 87), private households (Code 88), and miscellaneous services
24 (Code 89). To further identify industries that may be included on
25 the list, the division shall also consider data from a rating
26 organization, as defined in Section 11750.1 of the Insurance Code,
27 the Division of Labor Statistics and Research, including the logs
28 of occupational injuries and illnesses maintained by employers on
29 Form CAL/OSHA No. 200, or its equivalent, as required by
30 Section 14301 of Title 8 of the California Code of Regulations, and
31 all other appropriate information. The list shall be established by
32 June 30, 1994, and shall be reviewed, and as necessary revised,
33 biennially.

34 (3) The division shall prepare a Model Injury and Illness
35 Prevention Program for Employers in Industries with Intermittent
36 Employment, and shall determine which industries have
37 historically utilized seasonal or intermittent employees. An
38 employer in an industry determined by the division to have
39 historically utilized seasonal or intermittent employees shall be
40 deemed to have complied with the requirements of subdivision (a)

1 with respect to a written injury and illness prevention program if
2 the employer adopts the model program prepared by the division
3 pursuant to this paragraph and complies with any instructions
4 relating thereto.

5 (i) With respect to any county, city, city and county, or district,
6 or any public or quasi-public corporation or public agency therein,
7 including any public entity, other than a state agency, that is a
8 member of, or created by, a joint powers agreement, subdivision
9 (d) shall not apply.

10 (j) *Every workers' compensation insurer shall conduct a*
11 *review, including a written report as specified below, of the injury*
12 *and illness prevention program (IIPP) of each of its insureds*
13 *within four months of the commencement of the initial insurance*
14 *policy term. The review shall determine whether the insured has*
15 *implemented all of the required components of the IIPP, and*
16 *evaluate their effectiveness. The training component of the IIPP*
17 *shall be evaluated to determine whether training is provided to line*
18 *employees, supervisors, and upper level management, and*
19 *effectively imparts the information and skills each of these groups*
20 *needs to ensure that all of the insured's specific health and safety*
21 *issues are fully addressed by the insured. The reviewer shall*
22 *prepare a detailed written report specifying the findings of the*
23 *review and all recommended changes deemed necessary to make*
24 *the IIPP effective. The reviewer shall be an independent licensed*
25 *California professional engineer, certified safety professional, or*
26 *a certified industrial hygienist.*

27 ~~SEC. 9.~~

28 SEC. 4. Section 6401.8 is added to the Labor Code, to read:

29 6401.8. (a) On or before January 1, 2006, the division shall
30 adopt regulations to require joint employer and employee
31 occupational safety and health committees or safety liaisons to be
32 included in the employer's injury and illness prevention program,
33 except as provided in subdivision (b). The division shall establish
34 minimum criteria for employer and employee occupational safety
35 and health committees or safety liaisons, including both of the
36 following:

37 (1) Employers with 50 or more employees shall have a joint
38 employer-employee occupational safety and health committee.

39 (2) Employers with fewer than 50 employees shall have at least
40 ~~an employee and employer safety liaison.~~

~~(b) (1) Subdivision (a) shall not apply to the following:~~

~~(A) Any employer with an experience modification rate of less than 1.1 in an industry that is either on the list of non-high-hazard industries in California, as established pursuant to paragraph (2) of subdivision (h) of Section 6401.7, or on the low hazard industry list, as established pursuant to paragraph (4) of subdivision (c) of Section 6401.7.~~

~~(B) Any employer with fewer than 10 employees unless either of the following applies:~~

~~(i) The employer's workers' compensation premium classification assigned to the greatest portion of the payroll for the employer is a premium rate in the top 25 percent of all premium rates for all classes pursuant to rules of the Insurance Commissioner.~~

~~(ii) The employer is on a designated list of high-hazard industries established pursuant to paragraph (3) of subdivision (c) of Section 6401.7.~~

~~(2) Paragraph (1) shall not apply to any employer if, in the last two years from the date of the most recent incident, the employer has had any workplace death or any serious injury, illness, or accident. "Serious injury, illness, or accident" means the employee was admitted to the hospital, suffered the loss of any member of the body, suffered any serious degree of permanent disfigurement, or required surgery for acute trauma: one employee and one employer representative as a safety liaison team.~~

~~(b) (1) Notwithstanding paragraphs (2) and (3), an employer who, in the last four years from the date of the most recent incident, has had an occupational safety and health citation for any work-related fatality, shall not be exempt from subdivision (a).~~

~~(2) An employer who has sufficient workers' compensation premiums to generate an experience modification rate shall be exempt from subdivision (a) unless any of the following apply:~~

~~(A) The employer has an experience modification rate of 1.25 or more.~~

~~(B) The employer is in a high hazard industry as determined pursuant to the following:~~

~~(i) The industry is not on the list of non-high hazard industries in California, as established pursuant to paragraph (2) of subdivision (h) of Section 6401.7.~~

1 (ii) *The industry is not on the low hazard industry list, as*
2 *established pursuant to paragraph (4) of subdivision (e) of Section*
3 *6401.7.*

4 (3) *An employer who does not have sufficient workers'*
5 *compensation premiums to generate an experience modification*
6 *rate shall be exempt from subdivision (a) unless either of the*
7 *following apply:*

8 (A) *An employee of the employer has, within the last two years,*
9 *had a work-related serious injury or illness, as defined in*
10 *subdivision (h) of Section 6302, or an injury or illness that resulted*
11 *in serious physical harm, as defined in subdivision (j) of Section*
12 *6302.*

13 (B) *The employer is in an industry on the designated list of high*
14 *hazard industries established pursuant to paragraph (3) of*
15 *subdivision (e) of Section 6401.7.*

16 (c) Employers exempted pursuant to subdivision (b) may
17 institute a joint employer-employee occupational safety and health
18 committee or safety liaison in order to apply for a certificate of
19 merit pursuant to Section 6401.9.

20 (d) (1) In determining employment levels under subdivisions
21 (a) and (b), the employer shall count all permanent, contract,
22 temporary, and seasonal workers under the employer's direction
23 and control, and shall base the number on peak employment.

24 (2) Temporary services employers and labor contractors shall
25 determine employment levels based upon the total number of
26 workers over which the employer or contractor exercises direction
27 and control.

28 ~~(e) For agriculture~~ (1) *For agricultural workplaces, the*
29 *agricultural employer shall establish the committee and include*
30 *representatives of labor contractors when those subcontractors are*
31 *active at the premises.*

32 ~~(f)~~

33 (2) For multiemployer nonpermanent workplaces, the general
34 or prime or principal contractor shall establish the committee and
35 include representatives of each subcontractor when those
36 subcontractors are active at the premises.

37 ~~(g)~~

38 (3) For multiemployer permanent workplaces, the facility shall
39 establish the committee and include representatives of each

1 subcontractor when those subcontractors are active at the
2 premises.

3 ~~(h)~~

4 (f) The duties of the joint employer-employee occupational
5 safety and health committee or safety liaison shall be addressed by
6 the minimum criteria established pursuant to subdivision (a), and
7 shall include, among other things, all of the following:

8 (1) Review of the employer's injury and illness prevention
9 program.

10 (2) Participation in and review of any periodic, scheduled
11 worksite inspections, including evaluating the effectiveness of
12 new safety equipment and health and safety procedures. For
13 multiemployer nonpermanent workplaces, the committee or
14 liaison shall review the work to be done in the next period for all
15 trades and crafts, the associated safety and health hazards that cross
16 craft lines, and may make recommendations to all employers
17 involved.

18 (3) Participation in and review of any investigation of causes
19 of incidents involving near-misses or death, injury, illness, or
20 exposure to hazardous substances.

21 (4) Participation in and review of any investigation of any
22 alleged hazardous condition or complaints.

23 (5) Participation in follow-up, abatement, and reporting back
24 to complainants regarding the complaints and, upon the request of
25 the division, regarding citations issued by the division.

26 (6) Development of a system for encouraging employees to
27 bring complaints or problems to the attention of the committee or
28 team, including anonymous complaints.

29 (7) Additional inspections and investigations by the committee
30 or liaison, when determined necessary by the committee or liaison.

31 (8) Recommendations to the employer regarding corrective
32 actions to be implemented within a specified time period. If a
33 recommendation is not implemented, the employer shall provide
34 a written explanation *to the committee or liaison*.

35 (9) Quarterly meetings if the employer is on the low hazard list,
36 *twice* monthly meetings if the employer is on the high hazard list
37 or has an experience modification rate of greater than 1.25, or
38 weekly meetings for multiemployer nonpermanent workplaces.

1 (10) A written agenda for each meeting, accurate and thorough
2 committee meeting minutes, and documentation of all other
3 activities.

4 ~~(11) Authority to stop an activity if a hazard that constitutes an~~
5 ~~imminent danger to life or health is believed to exist. The~~
6 ~~committee or liaison may also recommend to the employer that~~
7 ~~work stop under other appropriate circumstances. If a~~
8 ~~recommendation is not followed, the employer shall provide a~~
9 ~~written explanation.~~

10 ~~(i)~~
11 *(11) Complete documentation of the activities of the committee*
12 *or liaison team included with the employer's injury and illness*
13 *prevention program and made available for inspection and*
14 *copying by the division or any other government agency, upon*
15 *request, and by employees or their representatives at reasonable*
16 *times and in a reasonable manner. Medical or other personal*
17 *information regarding a worker shall be available only to*
18 *government agencies authorized by law to obtain that information*
19 *and other authorized requesters with the permission of the affected*
20 *employee.*

21 *(12) Prominent posting of the committee's agenda, outstanding*
22 *action items, and proposed and actual resolutions of health and*
23 *safety concerns within 30 days after the item has been resolved.*

24 *(13) Prominent posting of the names of all committee members*
25 *or liaison team members.*

26 *(14) The committee or liaison team may also recommend to the*
27 *employer that work stop if the committee or liaison team believes*
28 *the situation constitutes an imminent hazard or serious menace to*
29 *the lives or safety of employees. If a recommendation is not*
30 *followed, the employer shall provide a written explanation to the*
31 *committee or liaison team, and shall post the recommendation*
32 *until 30 days after the matter is resolved.*

33 (g) The structure of the joint employer-employee occupational
34 safety and health committee or safety liaison shall be addressed by
35 the minimum criteria established pursuant to subdivision (a), and
36 shall include, among other things, all of the following:

37 (1) An equal number of employer and employee
38 representatives. The employer and employees may agree to a
39 greater number of employee representatives.

(2) At least two employee and two management members for the first 50 employees, and at least one additional employee and one additional management member for each subsequent 50 employees. The employer and employees may agree to a maximum of 20 members or more in workplaces where over 20 members would be required pursuant to this paragraph. *The employer and employees may agree to one or more subcommittees in large workplaces to accommodate shifts and other needs of large workplaces.*

(3) Reasonable efforts to ensure representation of various shifts, trades and crafts, unions, and work activities.

(4) Majority vote on all recommendations to the employer.

(5) Annual rotation of the chair between labor and management.

~~(j) The committee or liaison member selection process shall be~~

(h) The selection of the committee or liaison member shall be addressed by the minimum criteria established pursuant to subdivision (a), and shall include, among other things, all of the following:

(1) The employer shall designate management representatives and direct their activities. The responsible person identified pursuant to paragraph (1) of subdivision (a) of Section 6401.7 shall be among the management representatives.

(2) If there is a collective bargaining agreement, the employee representatives shall be selected according to internal union procedures, *and the union shall direct their activities.* If there are multiple unions at the same workplace, each union shall be entitled to at least one representative, unless the unions decide among themselves to allocate representation in another manner. If there are union and nonunion workers at the same workplace, the union representative ~~shall~~ *may* serve as representative for all the employees.

(3) If there is no ~~union-representative~~ *collective bargaining agreement*, all of the following shall apply:

(A) The employee representatives shall be nonsupervisory employees selected randomly from among volunteers, or chosen by secret ballot in an election supervised by the State Mediation and Conciliation Service according to its procedures.

(B) If possible, at least one-half of the employee members of the committee or liaison shall have been employed at least 24 months with the present employer.

~~(C) The terms of employee representatives shall be three years, and an employee representative may be reelected or serve again if randomly chosen from among all volunteers.~~

~~(D) The terms of employee representatives shall be staggered or alternated.~~

~~(k)~~

(C) The terms of employee representatives shall be three years, without term limits, and staggered or alternated so as to maintain some continuity on the committee.

(D) The division, in consultation with the State Mediation and Conciliation Service and other affected parties, shall adopt regulations specifying the procedures for selecting representatives for joint employer-employee occupational safety and health committees or safety liaison teams if there is no collective bargaining agreement between the employer and any union representing the employees.

(i) All committee or liaison members shall be trained regarding the basics of occupational safety and health and effective adult learning methods, as follows:

(1) Each member shall initially receive a minimum of 32 hours of health and safety training to help them become effective liaison or committee members. The content of this training shall include all of the following:

(A) Hazard identification and control.

(B) Incident investigation techniques.

(C) Principles of effective worker training and education.

(D) Mechanics of committee operations, including committee rights and duties.

(E) Workers' rights with respect to occupational safety and health.

(F) An overview of this standard and other relevant standards.

(2) Each member shall receive a minimum of eight hours of refresher health and safety training every three years.

~~(3) Each member shall be permitted to take educational leave for a period of two normal working days, up to a maximum of 16 hours per year, which includes the required eight hours of refresher training every three years, for the purposes of attending workplace~~

~~1 safety and health training seminars, programs, or courses of~~
~~2 instruction.~~

~~3 (4)~~

(3) Training shall be provided by the Worker Occupational
Safety and Health Training and Education Program (WOSHTEP),
the division, a union, or an approved trainer. The division shall
approve all training providers and curriculum and may further
define training requirements. The training shall be provided at
employer expense, without loss of pay or other benefits, and
during work hours. Refresher training shall be tailored to meet the
needs of specific industries, occupations, or hazards, and shall
include new laws and regulations. Upon satisfactory completion
of any training program, each member shall receive a certificate
of completion indicating the date and type of program.

~~15 (l)~~

(j) Each member shall be compensated with his or her regular
wages and benefits while attending any safety and health
committee meeting, doing related safety and health *committee*
work, or receiving safety and health training.

~~20 (m) Complete documentation of the activities of the committee~~
~~21 or liaison shall be included with the employer's injury and illness~~
~~22 prevention program and made available for inspection and~~
~~23 copying by the division or any other government agency, upon~~
~~24 request, and by employees or their representatives at reasonable~~
~~25 times and in a reasonable manner. Medical or other personal~~
~~26 information regarding a worker shall be available only to~~
~~27 government agencies authorized by law to obtain that information~~
~~28 and other authorized requesters with the permission of the affected~~
~~29 employee.~~

~~30 (n) The names of all committee or liaison members shall be~~
~~31 permanently and prominently posted. The committee's agenda,~~
~~32 outstanding action items, and proposed and actual resolutions of~~
~~33 health and safety concerns, shall be posted until 30 days after the~~
~~34 item has been resolved.~~

~~35 (o)~~

(k) No committee or liaison member shall be laid off during his
or her tenure or within one year of the end of tenure unless he or
she is the last person in his or her class or category on the job,
except as otherwise provided by a collective bargaining
agreement.

1 ~~(p)~~

2 (l) Upon application, the division may approve any safety
3 committee that is innovative or different in form or function, if the
4 committee meets the intent of this section and the regulations
5 promulgated by the division.

6 ~~(q) The committee~~

7 (m) *The employee committee members* or liaison shall act in an
8 advisory capacity to the employer, and individual employee
9 participants do not assume the employer's exclusive responsibility
10 for providing a safe and healthful workplace or any related
11 liability. No employee or employee organization shall be held
12 liable for any act or omission in connection with the activities of
13 a committee or liaison.

14 ~~(r) The division, in consultation with the State Mediation and~~
15 ~~Conciliation Service and other affected parties, shall adopt~~
16 ~~regulations specifying the procedures for selecting employee~~
17 ~~representatives for joint employer-employee occupational safety~~
18 ~~and health committees or safety liaisons if there is no collective~~
19 ~~bargaining agreement between the employer and any union~~
20 ~~representing the employees.~~

21 ~~SEC. 10.~~

22 SEC. 5. Section 6401.9 is added to the Labor Code, to read:

23 6401.9. (a) On or before January 1, 2006, the ~~Division of~~
24 ~~Workers' Compensation, in cooperation with the Division of~~
25 ~~Occupational Safety and Health and the Department of Insurance,~~
26 ~~Department of Industrial Relations or one or more of its divisions~~
27 shall establish criteria for a certificate of merit based on whether
28 an employer has an effective injury and illness prevention program
29 (IIPP), including an effective joint employer-employee
30 occupational safety and health committee or safety liaison.

31 (b) An eligible employer may apply for a certificate of merit
32 that shall entitle the employer to a 5-percent discount from the
33 insurance carrier or group self-insurance fund beyond any
34 experience modification rate or other discount standard to the
35 workers' compensation insurance industry. An eligible employer
36 may also use the certificate of merit to ~~meet one of the~~
37 ~~qualifications for~~ *establish a presumption that it has an effective*
38 *safety program as may be required from a responsible bidder*
39 pursuant to Sections 1200 and 1201 of the Public Contract Code.

(c) The criteria for the certificate of merit shall include, at a minimum, all of the following:

~~(1) No employer shall be eligible for a certificate unless the~~
(1) The employer has in place an effective IIPP and an effective joint employer-employee occupational safety and health committee or ~~safety liaison~~.

~~(2) liaison team~~ If an employer is not required to have a committee or liaison, he or she may voluntarily implement a committee or liaison in order to take advantage of the incentives described in subdivision (b).

~~(3)~~
(2) The employer shall not be eligible to apply for a certificate of merit until the committee or liaison has been operating effectively for at least six months.

~~(d) The employer shall submit an application, under penalty of perjury, for an initial certificate or biannual renewal certificate to the Division of Workers' Compensation. The application form shall be accompanied by documentation as determined by the Division of Workers' Compensation in cooperation with the Division of Occupational Safety and Health and the Department of Insurance.~~

~~(e) The criteria for the certificate of merit shall conform with, among other criteria to be determined by the Division of Workers' Compensation in cooperation with the Division of Occupational Safety and Health and the Department of Insurance, the size of the employer, whether the employer is on a high or low hazard industry list, the lost-workday case incident rate, and the employer's experience modification rate, if any.~~

(3) *The criteria for the certificate of merit shall conform with criteria developed by the Division of Occupational Safety and Health for an effective IIPP and joint employer-employee occupational safety and health committee or liaison team.*

(4) *At a minimum, the criteria will take into account the size of the employer, whether or not the employer is a high or low hazard industry, the lost-workday case incident rate, and the employer's experience modification rate, if any.*

(d) *The employer shall submit an application, under penalty of perjury, for an initial certificate or biannual renewal certificate to the Department of Industrial Relations according to procedures developed by the department.*

1 ~~SEC. 11.— Section 6401.10 is added to the Labor Code, to read:~~

2 ~~6401.10. (a) Every workers' compensation insurer shall~~
3 ~~conduct a review, including a written report as specified in~~
4 ~~subdivision (g), of the injury and illness prevention program~~
5 ~~(HPP) of each of its insureds at the beginning of the second year~~
6 ~~of insurance for an employer who has been with the insurance~~
7 ~~company for one preceding year. The review shall determine~~
8 ~~whether the insured has implemented all of the required~~
9 ~~components of the HPP, and evaluate their effectiveness.~~

10 ~~(b) Additionally, the insurer shall conduct an on-site review at~~
11 ~~the beginning of the third year for an employer who has been with~~
12 ~~the insurance company for the two preceding years. The on-site~~
13 ~~review shall include a hazard evaluation and specify not only the~~
14 ~~general and specific hazards, but also shall do all of the following:~~

15 ~~(1) Identify conditions that are not in compliance and~~
16 ~~recommend a timetable for compliance.~~

17 ~~(2) Identify areas that need improvement and recommend a~~
18 ~~timetable for improvement.~~

19 ~~(3) Make specific recommendations to achieve compliance and~~
20 ~~improvement.~~

21 ~~(4) Identify what assistance the insurer will provide to the~~
22 ~~insured to bring the insured into compliance or to improve the~~
23 ~~insured's HPP.~~

24 ~~(c) The training component of the HPP shall be evaluated to~~
25 ~~determine whether training is provided to line employees,~~
26 ~~supervisors, and upper level management, and effectively imparts~~
27 ~~the information and skills each of these groups needs to ensure that~~
28 ~~all of the insured's specific health and safety issues are fully~~
29 ~~addressed by the insured.~~

30 ~~(d) If the insured and insurer have signed at least a three-year~~
31 ~~contract, and upon request, any insured who is required to or who~~
32 ~~has elected to implement a joint employer-employee occupational~~
33 ~~safety and health committee or safety liaison, shall receive~~
34 ~~assistance from his or her insurer in training the committee~~
35 ~~members.~~

36 ~~(e) The insurer shall communicate annually with the insured in~~
37 ~~order to offer assistance to the insured to improve the effectiveness~~
38 ~~of the insured's HPP and to inform the insured of the services of~~
39 ~~the division's consultation service.~~

1 ~~(f) Upon the request of the insured, if the insured and insurer~~
2 ~~have signed at least a three-year contract, and the insured's~~
3 ~~experience modification rate, if any, is greater than 1.4, the insurer~~
4 ~~shall conduct an on-site review annually with the insured to~~
5 ~~improve the effectiveness of the insured's HPP.~~

6 ~~(g) The reviewer shall prepare a detailed written report~~
7 ~~specifying the findings of the initial and all subsequent reviews~~
8 ~~and all recommended changes deemed necessary to make the HPP~~
9 ~~effective.~~

10 ~~(h) The reviewer shall be an independent licensed California~~
11 ~~professional engineer, certified safety professional, certified~~
12 ~~industrial hygienist, or a safety and health representative with the~~
13 ~~insurance carrier who has three years' experience as a safety and~~
14 ~~health representative.~~

15 ~~SEC. 12.— Section 6401.11 is added to the Labor Code, to read:~~

16 ~~6401.11. All insurers, individually or through an association~~
17 ~~of which the insurer is a member, shall, for high-frequency injuries~~
18 ~~in various industries, develop and implement a series of targeted~~
19 ~~prevention programs, including feasible interventions, to assist~~
20 ~~employers. These programs shall be made available to all insureds.~~
21 ~~In order to select the targeted prevention programs, the insurer or~~
22 ~~an association in which the insurer is a member, shall annually~~
23 ~~determine the top four high-frequency injuries in various~~
24 ~~industries for the three previous years. These findings, as well as~~
25 ~~the analysis that provides the basis for the findings, shall be~~
26 ~~provided to the division and made available to the public.~~

27 ~~SEC. 13.—~~

28 ~~SEC. 6. Section 1103 of the Public Contract Code is amended~~
29 ~~to read:~~

30 ~~1103. "Responsible bidder," as used in this part, means a~~
31 ~~bidder who has demonstrated the attribute of trustworthiness, as~~
32 ~~well as quality, fitness, capacity, and experience to satisfactorily~~
33 ~~perform the public works contract, in compliance with Chapter 1.5~~
34 ~~(commencing with Section 1200).~~

35 ~~SEC. 14.—~~

36 ~~SEC. 7. Chapter 1.5 (commencing with Section 1200) is~~
37 ~~added to Part 1 of Division 2 of the Public Contract Code, to read:~~
38

1 CHAPTER 1.5 BIDDER INJURY AND ILLNESS PREVENTION
2 PROGRAM
3

4 1200. A public entity subject to this code shall require bidders
5 to be responsible with respect to worker occupational safety and
6 health. To that end, the bidder, or its component parts if the bidder
7 is a joint venture, shall be required to submit information as set
8 forth in subdivision (a) of Section 1201 regarding the effectiveness
9 of its injury and illness prevention program (IIPP) for a period of
10 at least four years, or for whatever period less than four years the
11 bidder has been in business, prior to the date of bid, in a form
12 specified by the public entity. A certificate of merit issued pursuant
13 to Section 6401.9 of the Labor Code shall demonstrate
14 presumptively that the employer has an effective IIPP and may be
15 submitted in lieu of the information required by subdivision (a) of
16 Section 1201. The certificate of merit shall also satisfy any
17 requirements for prequalification that the entity may establish.

18 1201. (a) A public entity subject to this code shall require that
19 each prospective bidder for a contract that does not have a
20 certificate of merit issued pursuant to Section 6401.9 of the Labor
21 Code, submit the following information in order for the entity to
22 evaluate the effectiveness of the bidder's injury and illness
23 prevention program:

24 (1) A copy of the prospective bidder's written injury and illness
25 prevention program.

26 (2) The bidder's history of occupational safety and health. The
27 history shall include, but not be limited to, at least a four-year
28 review prior to the date of the bid, or for whatever period less than
29 four years the bidder has been in business, of both of the following:

30 (A) The bidder's history of worker injuries and illnesses as
31 reflected by workers' compensation costs, lost work days, injury
32 litigation, doctor's first reports, employer's *first* reports, and Log
33 300 forms.

34 (B) The bidder's history of safety and health violations as
35 established by citations, special orders, and orders to take special
36 action, as well as any information memorandum issued by the
37 Division of Occupational Safety and Health, federal Occupational
38 Safety and Health Administration, or other occupational safety
39 and health agencies in other states or federal jurisdictions.

1 (b) Information submitted pursuant to subdivision (a) shall be
2 a public record except with respect to any individual's personal
3 identifiers.

4 (c) For purposes of this section, "bidder" includes all entities
5 holding active licenses required by the bid, if any, including the
6 component licenses for any joint ventures, and including other
7 entities that may be considered to be substantially the same
8 business by virtue of overlapping corporate or other business
9 structure.

10 (d) A public entity may establish a process for prequalifying
11 prospective bidders for purposes of this section. Any
12 prequalification pursuant to this process shall be valid for one
13 calendar year following the date of the initial prequalification. As
14 part of any prequalification process established pursuant to this
15 subdivision, the entity also shall establish an appeal process
16 whereby prospective bidders may appeal the failure to prequalify
17 and the public may appeal the granting of prequalification to a
18 prospective bidder.

19 1202. (a) A public entity subject to this code shall include a
20 provision in the contract of each successful bidder to provide a safe
21 and healthful workplace.

22 (b) The Department of Industrial Relations, in collaboration
23 with affected state and local agencies and interested parties, shall
24 develop model guidelines for contractual language for public
25 entities to assure that the successful bidder provides a safe and
26 healthful workplace.

27 ~~SEC. 15.— It is the intent of the Legislature that any costs to the~~
28 ~~Division of Occupational Safety and Health that may result from~~
29 ~~transferring occupational safety and health retaliation cases from~~
30 ~~the Division of Labor Standards Enforcement to the Division of~~
31 ~~Occupational Safety and Health due to the enactment of this statute~~
32 ~~shall be paid from grants available under subdivision (g) of Section~~
33 ~~672 of Title 29 of the United States Code.~~

34 ~~SEC. 16.~~

35 *SEC. 8.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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